

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

Fond du Land Band of Lake Superior Chippewa,

Case No. 19-cv-2489 (PJS/LIB)

Plaintiff,

v.

ORDER

Cathy Stepp, et al.,

Defendants.

Friends of the Boundary Waters Wilderness, et al.,

Case No. 19-cv-2493 (PJS/LIB)

Plaintiffs,

v.

ORDER

U.S. Army Corps of Engineers, et al.,

Defendants.

This matter comes before the undersigned United States Magistrate Judge pursuant to a general assignment made in accordance with the provisions of 28 U.S.C. § 636 and upon the routine supervision of the cases that pend before this Court in the related matters of Fond Du Lac Band of Lake Superior Chippewa v. Stepp, et al., 19-cv-2489 (PJS/LIB), and Friends of the Boundary Waters Wilderness, et al. v. U.S. Army Corps of Engineers, et al., 19-cv-2493 (PJS/LIB).

These related actions were both initiated on September 10, 2019. The cases both arise out of Plaintiffs' opposition to the Northmet Mining Project in northern Minnesota. Generally, Plaintiffs allege that the Environmental Protective Agency and the U.S. Army Corps of Engineers improperly issued permits for the Northmet Mining Project.

On November 20, 2019, EIP Credit Co., LLC filed its Motion to Intervene, [Docket No. 14], in Friends of the Boundary Waters Wilderness, et al. v. U.S. Army Corps of Engineers, et al., 19-cv-2493 (PJS/LIB). At the request of the parties, the Court took EIP Credit's Motion to Intervene under advisement on the written submission on January 8, 2020. (Order [Docket No. 44]).

On December 17, 2019, Poly Met Mining, Inc. filed its Motion to Intervene, [Docket No. 30], in Friends of the Boundary Waters Wilderness, et al. v. U.S. Army Corps of Engineers, et al., 19-cv-2493 (PJS/LIB). At the request of the parties, the Court also took Poly Met's Motion to Intervene under advisement on the written submission on January 8, 2020. (Order [Docket No. 44]).

On December 17, 2019, Poly Met filed its Motion to Intervene, [Docket No. 22], in Fond Du Lac Band of Lake Superior Chippewa v. Stepp, et al., 19-cv-2489 (PJS/LIB). Upon Poly Met's request, the Court took Poly Met's Motion to Intervene under advisement on the written submissions of the parties on January 8, 2020. (Order [Docket No. 35]).

As all three Motions to Intervene pertain to related issues of law and fact in related cases, the Court took all three Motions to Intervene in both cases under advisement at the same time to conserve judicial efficiency.

On January 17, 2020, Northern Conservation, LLC; Northshore Mining Company; and United Taconite LLC filed their joint Motion to Intervene, [Docket No. 49], in Friends of the Boundary Waters Wilderness, et al. v. U.S. Army Corps of Engineers, et al., 19-cv-2493 (PJS/LIB). Oral arguments on Northern Conservation, Northshore Mining Company, and United Taconite's Motion to Intervene are scheduled to be heard before the undersigned on March 6, 2020. (Notice of Hearing [Docket No. 50]). In their moving papers, Northern Conservation,

Northshore Mining Company, and United Taconite indicated that neither Plaintiffs nor Defendants took a position on the Motion to Intervene at the time it was filed.

On January 28, 2020, Plaintiffs in Friends of the Boundary Waters Wilderness, et al. v. U.S. Army Corps of Engineers, et al., 19-cv-2493 (PJS/LIB), filed a “Memorandum of Law in Opposition to Motion to Intervene by Northern Conservation, LLC, Northshore Mining Company, and United Taconite, LLC.” [Docket No. 64]. Plaintiffs’ memorandum indicates that they do in fact oppose Northern Conservation, Northshore Mining Company, and United Taconite’s joint Motion to Intervene.

On January 28, 2020, Northern Conservation, Northshore Mining Company, and United Taconite filed a Motion for Leave to File Reply in Support of Motion to Intervene. [Docket No. 65]. Through their Motion, Northern Conservation, Northshore Mining Company, and United Taconite seek permission of this Court to file a reply memorandum in support of their Motion to Intervene in Friends of the Boundary Waters Wilderness, et al. v. U.S. Army Corps of Engineers, et al., 19-cv-2493 (PJS/LIB). Northern Conservation, Northshore Mining Company, and United Taconite assert that they should be permitted to file a reply memorandum because they initially believed Plaintiffs took no position on the Motion to Intervene, because Plaintiffs’ memorandum inaccurately states the applicable legal standards, and because Plaintiffs’ memorandum mischaracterizes Northern Conservation, Northshore Mining Company, and United Taconite interest in the case.

Local Rule 7.1(b), which governs motions practice involving nondispositive motions such as a motion to intervene, does not provide a moving party with the opportunity to submit a reply brief in support of a nondispositive motion. See, LR 7.1(b). The Rule does, however,

provide the Court with discretion to permit a party to file a reply memorandum in support of a nondispositive motion. See, LR 7.1(b)(3).

Based on the Court's initial review of the record now before it, the Court finds that permitting Northern Conservation, Northshore Mining Company, and United Taconite to file a joint reply in support of their Motion to Intervene in Friends of the Boundary Waters Wilderness, et al. v. U.S. Army Corps of Engineers, et al., 19-cv-2493 (PJS/LIB), may aid the Court in the disposition of the Motion to Intervene. Accordingly, the Court will grant Northern Conservation, Northshore Mining Company, and United Taconite a reasonable time to file a reply memorandum in support of their Motion to Intervene.

Therefore, Northern Conservation, Northshore Mining Company, and United Taconite's Motion for Leave to File Reply in Support of Motion to Intervene, [Docket No. 65], is **GRANTED**. As soon as practicable and in any event no later than February 6, 2020, Northern Conservation, Northshore Mining Company, and United Taconite shall file and serve their joint reply memorandum in support of their Motion to Intervene, [Docket No. 49], in Friends of the Boundary Waters Wilderness, et al. v. U.S. Army Corps of Engineers, et al., 19-cv-2493 (PJS/LIB).

Furthermore, upon conducting a preliminary review of Northern Conservation, Northshore Mining Company, and United Taconite's Motion to Intervene; the papers submitted in support thereof; and the papers submitted in opposition thereto, the Court has determined that a hearing on Northern Conservation, Northshore Mining Company, and United Taconite's Motion to Intervene, [Docket No. 49], is unnecessary and would not benefit the Court in consideration of said Motion. Therefore, the Motions Hearing currently scheduled in Friends of the Boundary Waters Wilderness, et al. v. U.S. Army Corps of Engineers, et al., 19-cv-2493

(PJS/LIB), for March 6, 2020, before the undersigned is hereby **CANCELLED**. The Court will take Northern Conservation, Northshore Mining Company, and United Taconite's Motion to Intervene, [Docket No. 49], in Friends of the Boundary Waters Wilderness, et al. v. U.S. Army Corps of Engineers, et al., 19-cv-2493 (PJS/LIB), under advisement upon the written submissions of the parties on March 6, 2020.

Because of the related issues of law and fact in all the Motions to Intervene in both related cases, the Court will take all the Motions to Intervene in both cases under advisement on the same date.

Therefore, for the foregoing reasons, and based on all of the files, records, and proceedings herein, **IT IS HEREBY ORDERED THAT:**

1. Northern Conservation, Northshore Mining Company, and United Taconite's Motion for Leave to File Reply, [Docket No. 65], in Friends of the Boundary Waters Wilderness, et al. v. U.S. Army Corps of Engineers, et al., 19-cv-2493 (PJS/LIB), is **GRANTED**;
2. As soon as practicable and in any event no later than **February 6, 2020**, Northern Conservation, Northshore Mining Company, and United Taconite shall file and serve their joint reply memorandum in support of their Motion to Intervene, [Docket No. 49], in Friends of the Boundary Waters Wilderness, et al. v. U.S. Army Corps of Engineers, et al., 19-cv-2493 (PJS/LIB);
3. The Motions Hearing in Friends of the Boundary Waters Wilderness, et al. v. U.S. Army Corps of Engineers, et al., 19-cv-2493 (PJS/LIB), presently scheduled for **March 6, 2020**, before the undersigned is hereby **CANCELLED**;
4. The Court will take EIP Credit's Motion to Intervene, [Docket No. 14]; Poly Met's Motion to Intervene, [Docket No. 30]; and Northern Conservation, Northshore Mining

Company, and United Taconite's Motion to Intervene, [Docket No. 49], in Friends of the Boundary Waters Wilderness, et al. v. U.S. Army Corps of Engineers, et al., 19-cv-2493 (PJS/LIB), under advisement on the parties' written submission on **March 6, 2020**; and

5. The Court will take Poly Met's Motion to Intervene, [Docket No. 22], in Fond Du Lac Band of Lake Superior Chippewa v. Stepp, et al., 19-cv-2489 (PJS/LIB), under advisement upon the written submissions of the parties on **March 6, 2020**.

Dated: January 30, 2020

s/Leo I. Brisbois
Hon. Leo I. Brisbois
U.S. MAGISTRATE JUDGE